

**QUESTIONS AND ANSWERS:
PROPOSED RULE TO DESIGNATE CRITICAL HABITAT FOR THE BLACK
PINESNAKE UNDER THE ENDANGERED SPECIES ACT AND RE-OPENING OF
COMMENT PERIOD ON PROPOSED THREATENED STATUS**

Q1: What action is the U.S. Fish and Wildlife Service taking?

A: The Service is proposing to designate a total of 338,100 acres (136,824 hectares) as critical habitat in six units in Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, Wayne Counties in Mississippi; and two units in Clarke County, Alabama. We also are announcing the availability of the economic analysis and reopening the comment period on the proposed listing rule.

Q2. What is the black pinesnake and where can you find them?

A: The black pinesnake is a large, non-venomous snake, and one of three subspecies of pinesnakes in the southeastern United States. These snakes are typically all black and may reach up to six feet in length. They are also known as gopher snakes, due to their overlapping range with the gopher tortoise and tendency to use underground stump holes and tunnels.

Today, they inhabit the upland longleaf pine forests of south Mississippi and southwestern Alabama.

Q3: Why did the Service propose listing of the black pinesnake as threatened?

A: Based on the analysis of the best scientific information available to the Service, the snake is likely to become endangered throughout its entire range in the foreseeable future, primarily due to loss of habitat quantity and quality. The pine ecosystem that this snake inhabits has been reduced by about 96 percent and habitat continues to be impacted and/or destroyed by human activities. A large partnership of conservation agencies, non-profits, and businesses is taking steps, however, to reverse that decline. Road mortality, direct killing by humans, and a lack of existing regulatory mechanisms also contribute to the species' decline.

Q4: What does a listing mean for federal agencies?

A: The ESA requires federal agencies to consult with the Service to ensure that any activity they fund, authorize, or carry out will not jeopardize the survival of a listed species. Therefore, federal agencies must consult with the Service for an activity involving federal funding, jurisdiction, or authorization that occurs on federal, public, or private land. Some activities are proposed for exemption from the "take" prohibitions under the ESA (please see Question 6) because they provide a benefit to the species, and the ESA allows for management flexibility in these cases when a species is listed as threatened.

Q5: What does a listing mean for the private landowner?

A: The basic responsibility of private landowners having black pinesnake populations on their lands is to avoid "take" of the species. Take means to harass, harm, kill, trap, capture, or collect a species listed under the ESA. This definition includes land use activities that result in death or

harm to the species. For example, direct destruction of the pinesnake's habitat by clearing the pine uplands for agriculture, pasture, or development would likely result in harm to, or death of black pinesnakes. In such instances, the Service can work with the landowner to develop a voluntary Habitat Conservation Plan (HCP) and associated measures designed to avoid, reduce, and/or mitigate those impacts. Some activities are also proposed for exemption from the "take" prohibitions for this proposed listing under the ESA through a 4(d) rule (see questions below).

Q6: What is a 4(d) rule and which activities are proposed for exemption from take?

A: A 4(d) rule is one of many tools provided by the ESA to allow for flexibility in the ESA's implementation and to tailor prohibitions to those that make the most sense for protecting and managing for threatened species.

The 4(d) rule ensures private landowners and citizens are not unduly burdened by regulations that do not further the conservation of the species, and that they are exempted from "take" prohibitions when conducting activities that benefit conservation of the species. A 4 (d) rule is often used to clarify what forms of "take" are, and are not, prohibited for a threatened species. Without a 4(d) rule, threatened wildlife species automatically get the same protections as endangered species under Section 9 of the ESA.

Activities which are expected to provide for the conservation of the black pinesnake and have been proposed for exemption under a 4 (d) rule include: herbicide treatments, prescribed burning, longleaf pine restoration, restoration along river banks and stream buffers, and some intermediate timber treatments. This provides more flexibility in implementing these actions than would be allowed under the ESA without the 4(d) rule. The Service is specifically seeking comments concerning the appropriateness and scope of the proposed section 4(d) rule provisions. In particular, we are interested in input regarding timber and forest management and restoration practices that would be appropriately addressed through such a rule. This includes those practices that may adjust the timing or methods to minimize impacts to the black pinesnake or its habitat.

Q7: How would the proposed listing impact the timber industry?

A: Many partners of the Service, including the forest products industry, are already working on conservation activities in the longleaf pine ecosystem. In general, the Service expects this proposed listing would have negligible impact on the forest products industry within the range of this species. Because some of the activities, such as stumping and clear-cutting stands, can impact the species where it is listed, the Service recommends that forestry professionals and landowners contact the Service directly about ways to avoid impacts to the species in areas where it is known to occur. However, it should also be noted that the species does not occur throughout each of the counties in the known range; therefore, many areas in these counties are considered outside the range of the species. Currently, about 73 percent of the known range is on state and federal lands. Also, the Service is proposing specific activities for exemption from the "take" prohibitions of the ESA, including some timber management activities (please see Question 6 above).

Q8: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas that are necessary for the conservation of a threatened or endangered species. The ESA defines “conservation” as the actions leading towards the eventual recovery of a species to the point where it is no longer meets the definition of an endangered or threatened species under the ESA.

Q9: Why is the Service proposing to designate critical habitat for the black pinesnake?

A: The ESA requires the Service to identify critical habitat at the time it determines a species should be protected under the ESA, to the maximum extent it is determinable and prudent for that species. The Service has sufficient knowledge of the habitat requirements of this snake to determine critical habitat and has determined the designation is prudent.

Q10: How does the Service determine what areas to propose for critical habitat?

A: Biologists consider the physical and/or biological habitat features needed for life history functions and successful reproduction of the subspecies. These include, but are not limited to: space for normal behavior; food, water, and other nutritional or physiological requirements; cover or shelter; sites for breeding and rearing offspring; and habitats that are protected from disturbance or are representative of the historic distribution of the subspecies.

Once these habitat features are characterized, the Service determines where across the range of the subspecies these features still exist and could still sustain a population.

Q11. What geographic areas are proposed as critical habitat and who are the landowners?

A: The Service is proposing to designate a total of 338,100 acres (136,824 hectares) as critical habitat in six units (one of which consisting of two subunits) in Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, Wayne counties, Mississippi; and two units in Clarke County, Alabama. Total approximate percentages of land ownership are: federal – 70 percent; private – 27 percent; state – 3 percent; and local – less than 1 percent. The primary federal landowner is the U.S. Forest Service, as the majority of five of the six units in Mississippi are on the De Soto National Forest.

Q12: Does a 'critical habitat' designation mean an area is considered a wildlife refuge or sanctuary?

A: No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. This designation does not allow the government or public to access private lands, nor does it require implementation of restoration, recovery, or enhancement measures by non-federal landowners.

Q13: What does a critical habitat designation do?

A: Section 7(a)(2) of the ESA requires federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any

endangered or threatened species or result in the destruction or adverse modification of its designated critical habitat.

In addition, Section 7(a)(4) of the ESA requires federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. The Service would then advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat and recommend ways to minimize any adverse effects.

Q14: How will the designation of critical habitat affect private landowners?

A: Critical habitat designation is expected to have limited impact on private landowners for several reasons. The majority of the proposed critical habitat designation isn't on private lands, and even when it is found on private lands, it is limited to the areas that contain the habitat features as described under Question 16 below. In addition, the 4(d) rule provides substantial flexibility for managers (see Question 6 above). It does not affect activities on private lands unless some sort of federal permit, license or funding is involved. As with listing, critical habitat designation does not mean that landowners would now be required to convert their land to longleaf pine forest or conduct pinesnake monitoring.

Q15: Did the Service include any unoccupied habitat within the proposed critical habitat designation?

A: No. All units are currently occupied by the black pinesnake.

Q16: What kind of habitat is considered critical to the black pinesnake?

A: Based on the Service's current knowledge of the life history, biology, and ecology of the subspecies, and the requirements of the habitat to sustain its essential life history functions, it determined that the specific elements of important physical and biological features needed for the conservation of the black pinesnake are:

- A longleaf pine-dominated forest, maintained by frequent fire, and comprising at least 5,000 acres (2,023 hectares) of mostly unfragmented habitat. This is an estimate of the area necessary to support a viable black pinesnake population. The forest should have an open canopy, reduced shrub layer (woody mid-story), and abundant herbaceous groundcover.
- Naturally burned-out or rotted-out pine stumps and their associated root systems, in longleaf pine forests on ridges with elevation of 150 feet (46 meters) or greater.
- Deep, well-drained soils, characterized by high sand content and no flooding.

Q17: What activities could adversely affect critical habitat and may require special management considerations for the black pinesnake?

A: Activities that may affect critical habitat (i.e., those areas identified specifically in the proposed designation) include, but are not limited to, the following:

- Timber management and site preparation activities such as some types of clear-cutting and disking that involve significant ground disturbance.

- Construction or widening of highways.
- Conversion of (occupied) habitat to agricultural or urban areas.
- Silvicultural activities that limit or eliminate suitable habitat, including conversion of mature open-canopied longleaf pine forest into high density off-site pine plantations that will result in a closed-canopy condition.
- Silvicultural activities that limit or eliminate the abundant herbaceous native groundcover, including broad-scale herbicide application that is not specifically targeted to eliminate hardwoods, reduce hazardous fuels, or control invasive species.

This list only applies to those areas identified as part of the critical habitat. Even in those areas, entirely private activities that do not involve federal permits, funding, or approval do not require consultation.

Q18: Are all areas within the critical habitat boundaries for the black pinesnake considered critical habitat?

A: No. In order for an area to be designated as critical habitat, the area has to contain one or more of the physical and biological elements essential to support the life history needs of the species or be essential to the conservation of the species. Critical habitat does not include existing developed sites such as homes or other urban structures, agricultural areas, highways, or other similar structures.

Q19: Does the ESA consider economic consequences as a part of designating critical habitat?

A: Yes. The Service must take into account the economic impact, as well as national security impacts or any other relevant impacts, of specifying any particular area as critical habitat. The Service may exclude any area from critical habitat if it determines the benefits of excluding it outweigh the benefits of specifying the area as part of critical habitat, unless the Service determines that failure to designate the areas as critical habitat would result in the extinction of the species.

The economic analysis for the black pinesnake estimates the incremental impacts from the critical habitat designation to be \$190,000 the first year and less in subsequent years. The costs are expected to be limited to additional administrative efforts on the part of federal agencies to consider impacts to critical habitat from their activities. This finding is due to the significant baseline protection provided by the snake's presence in all units, and also the presence of other listed species, such as the gopher tortoise (which is listed as threatened west of the Tombigbee and Mobile rivers in Alabama and as an ESA candidate species east of the Tombigbee River) and the endangered red-cockaded woodpecker, and designated critical habitat (endangered dusky gopher frog), and ongoing conservation benefitting them. In addition, project modifications that would likely be undertaken to avoid impacts to critical habitat are expected to be the same as those that would be done to avoid impacting the snake itself.

Q 20: What impacts will these rules have to military readiness or training on Camp Shelby?

Currently, military training activities occur on Camp Shelby in areas with listed species, specifically the gopher tortoise and red-cockaded woodpecker which use virtually identical habitat as the black pinesnake. Therefore, we expect there to be little additional impact to military readiness or training from these rules, as the existing precautions and policy surrounding activities in occupied gopher tortoise habitat (e.g., any potential ground disturbance associated with training) would be acceptable for occupied black pinesnake habitat as well. In addition, we are proposing to exempt lands covered under the Mississippi Army National Guard's Integrated Natural Resources Management Plan (INRMP) from critical habitat designation, and are considering the exclusion of other installation lands due to national security concerns.

Q21: Who should you contact for more information?

A: Matt Hinderliter at 601-321-1132 or Connie Light Dickard at 601-321-1121, both at the same address: U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.